

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

Benedict Guthrie Olberding,

Defendant.

Criminal Case No.: 4:11-cr-00413-RBH

**DEFENDANT'S STATUS REPORT
AS TO THE BANK OF AMERICA
MOTION TO COMPEL**

Per this Court's February 1, 2012 Order, the defendant, Benedict Guthrie Olberding, by and through undersigned counsel, submits the following status report pertaining to the defense motion to compel:

As this Court can appreciate, one of the key issues at sentencing will be the issue of loss, including alleged loss to Bank of America. While Government 302s indicate a loss to Bank of America (formerly Countrywide), such a loss is not consistent with the history of this loan. The loss suggested by the discovery, if accepted by this Court for sentencing purposes, would result in a loss enhancement of 14 points under the Federal Sentencing Guidelines which would substantially increase Mr. Olberding's sentence. As such, in order to render a competent defense, counsel filed a motion to compel documentation earlier requested via subpoena.

In the motion to compel, the defense requested, among other documentation, a copy of the note. Counsel for Bank of America has now indicated in writing (on January 9, 2012) that Bank of America cannot locate the note. In terms of the secondary market documentation that was requested, Bank of America stated the information requested was publicly available, and the defense has employed an expert

who has spent numerous hours searching through SEC filings and documentation, the findings of which have been supplied to Bank of America in support of the defense claim that there is no loss. Currently, the defense is working with Bank of America counsel to determine whether Bank of America can agree with the defense on the issue of loss, and we hope to have a response by next week.

Respectfully submitted,

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February 13, 2012

Columbia, South Carolina